

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL MCDONALD, et al.,

No. C-09-1365 MMC

Plaintiffs,

**ORDER DENYING PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER; ADVANCING
HEARING ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

v.

RESIDENTIAL MORTGAGE CAPITAL, et
al.,

Defendants.

Before the Court is plaintiffs' Motion for Preliminary Injunction to Prohibit Sale of Property and Application for Temporary Restraining Order, filed April 16, 2009 and noticed for hearing June 5, 2009,¹ by which plaintiffs request an injunction prohibiting the sale of their home at a foreclosure sale. In their motion, plaintiffs state no such foreclosure sale has been scheduled but that their home "could be sold as soon as May 18th, 2009." (See Mot. at 3:8-9.) Under such circumstances, plaintiffs have failed to show they are "likely to suffer irreparable harm," provided their motion for a preliminary injunction is heard prior to

¹Plaintiffs initially filed, on April 6, 2009, a Motion for Preliminary Injunction, which motion was noticed for hearing on May 13, 2009 before Magistrate Judge Edward M. Chen. Because defendant Residential Mortgage Capital declined to consent to the assignment to Magistrate Judge Chen, the action was reassigned to the undersigned on April 14, 2009. In light of the Reassignment Order's direction that any motion pending at the time of reassignment "should be renoticed for hearing before the judge to whom the case has been reassigned" (see Reassignment Order, filed Apr. 14, 2009), plaintiffs filed the instant motion and noticed it in accordance with Civil Local Rule 7-2(a).

1 May 18, 2009. See Winter v. Natural Res. Def. Council, 129 S. Ct. 365, 374 (2008)
2 (holding plaintiff seeking preliminary injunction must demonstrate “that irreparable injury is
3 likely in the absence of an injunction”) (emphasis in original).

4 Accordingly, plaintiffs’ application for a temporary restraining order is hereby
5 DENIED, and the hearing on plaintiffs’ motion for a preliminary injunction is hereby
6 ADVANCED to May 14, 2009 at 2:30 p.m. Defendants’ opposition shall be filed no later
7 than May 1, 2009, and plaintiffs’ reply shall be filed no later than May 7, 2009.

8 Plaintiffs’ shall serve a copy of this order on any defendant which has not yet
9 appeared in the above-titled action.

10 **IT IS SO ORDERED.**

11
12 Dated: April 22, 2009


MAXINE M. CHESNEY
United States District Judge